JOHN F. AND VICKIE L. MALONE

IBLA 84-657 Decided November 13, 1985

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring unpatented placer mining claims null and void. AA-45038 through AA-45044.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land withdrawn from mineral entry at the time of location is properly declared null and void ab initio. BLM owes no duty to mining claimants to promptly ascertain the legal status of every claim filed and inform such claimants of its findings.

APPEARANCES: John F. and Vickie L. Malone, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

John F. and Vickie L. Malone appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), dated May 11, 1984, declaring their placer mining claims known as Vickies #1 - #7 (AA-45038 through AA-45044) null and void because the subject lands were withdrawn from mineral entry. John Malone located Vickies #1 and #2 on August 19, 1981, Vickies #3 - #5 on August 22, 1981, and Vickies #6 and #7 on September 13, 1981. The claims are located in secs. 1 and 12, T. 9 S., R. 71 W., Seward Meridian, Alaska. The identified township had been withdrawn from mineral entry on March 9, 1972, by Public Land Order No. (PLO) 5179, 37 FR 5579 (Mar. 16, 1972).

In their statement of reasons, John and Vickie Malone allege an employee of the BLM field office had informed them PLO 5179 was of no effect after enactment of section 1322 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3209 (1982). They assert BLM was aware of appellants' development of the claims and took no action to stop development. They also note the lands at issue are within the planning boundaries of the Bristol Bay Cooperative Region and argue the mining claims do not conflict with proposed management plans.

[1] Some of the arguments set forth by appellants are similar to those presented by them and others in John F. Malone, 86 IBLA 85 (1985), a decision involving mining claims located in three townships directly to the west of the claims at issue here. The lands in that decision were withdrawn in part under PLO 5179 and in whole under PLO 5181. The Board's discussion in Malone focused primarily upon the segregative effect of PLO 5181. After a brief review of the limited duration of withdrawals pursuant to subsections 17(d)(1) and 17(d)(2)(A) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(1), (2)(A) (1982), the Board relied on the authority found in Exec. Order No. 10355, 17 FR 4831 (May 28, 1952), as the primary basis for a finding of continuing effect of the withdrawal under PLO 5181:

> Prior to enactment of FLPMA, executive withdrawals of public lands issued without congressional direction were accomplished under implied authority, United States v. Midwest Oil Co., 236 U.S. 459 (1915), or authority granted by the Pickett Act of 1910, 36 Stat. 847 (previously codified at 43 U.S.C. § 141 (1970)). Cf., Pan Alaska Fisheries, Inc., 74 IBLA 295, 306 (1983). Exec. Order No. 10355 was a delegation of the withdrawal authority to the Secretary. 17 FR 4831 (May 28, 1952); 43 U.S.C. § 141 note (1970). As noted by appellants, the implied authority was revoked by section 704(a) of FLPMA, supra. The Pickett Act authority was also revoked by the same provision. However, contrary to appellants' argument, Congress provided in section 701(c) of FLPMA, 90 Stat. 2786, a savings clause for existing withdrawals previously issued under such revoked authority as follows: "All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this [FLPMA] shall remain in full force and effect until modified under the provisions of this Act or other applicable law." 43 U.S.C. § 1701 note (1982). Since the record reflects that no express administrative action has modified or rescinded the withdrawal order in PLO 5181, it remains effective and binding unless invalidated by subsequent congressional action.

John F. Malone, supra at 87.

PLO 5179 was also issued under the authority of Exec. Order No. 10355. Numerous amendments to PLO 5179 appear in the Federal Register between the date of its issuance and the date of appellants' mineral entry. However, rescission of the withdrawal order for the lands in question is not evident. See 43 CFR Appendix. In fact, PLO 6477, 48 FR 45395, 45400 (Sept. 29, 1983) (a partial revocation of PLO 5179 and opening of withdrawn lands other than those at issue here) states in part: "7. No lands are opened by this order which are * * * (9), the subject of prior withdrawals or appropriations still in effect." Since it would be unnecessary to revoke PLO 5179 had it been rescinded, the clear implication is the withdrawal of lands under PLO 5179 remains effective.

In response to appellants' assertion that ANILCA rescinded the PLO 5179 withdrawal, we refer to the following excerpt from Malone:

> Appellants argue that in section 1203 of ANILCA, 16 U.S.C. § 3183 (1982) Congress enacted its own superseding withdrawal for lands within the boundaries identified for that provision including the lands embraced by appellants' claims. Available records and maps indicate the claims here in question are probably within the Bristol Bay Cooperative Region as defined in Subsection (a)(2) of section 1203, 16 U.S.C. § 3183(a)(2) (1982). The Bristol Bay Cooperative Region was established to "provide for the preparation and implementation of a comprehensive and systematic cooperative management plan" to conserve natural and cultural resources, to provide for appropriate land exchanges or state selections, and to identify lands suitable for inclusion with units of the national conservation system. 16 U.S.C. § 3183(b) (1982). Subsection (f) provides for withdrawal of all Federal lands within the region for a 3-year period (from December 2, 1980) and management by BLM consistent with the provisions of the statute. 16 U.S.C. § 3183(f) (1982). The withdrawal order under PLO 5181 was designed to preserve the lands for possible addition to the national wildlife refuge system. This purpose does not appear to conflict with section 1203. See also 1980 U.S. Code Cong. & Ad. News 5170, 5196-5199. Appellants have presented no showing of authority for assuming a congressional intent to revoke the prior withdrawal.

Id. at 87. PLO 5179 was also issued to preserve lands for possible addition to the national wildlife refuge system. Section 1322 of ANILCA, 16 U.S.C. § 3209 (1982), an express revocation of certain preexisting land orders, does not include PLO 5179 or similar withdrawals.

Appellants suggest mining on the claims does not conflict with the intent of ANILCA or program planning. Overlooked in appellants' arguments is the fact that section 1203(f) of ANILCA, 16 U.S.C. § 3183 (1982), withdrew lands within the Bristol Bay Cooperative Region from mineral entry from December 2, 1980, until December 3, 1983. The record, therefore, indicates the lands embraced by the disputed claims were withdrawn from mineral entry and location by both section 1203(f) of ANILCA and PLO 5179 at the time the claims were located in 1981. BLM's determination that the land had been withdrawn was correct.

It is well established that a mining claim located on land which is not open to mineral entry confers no rights on the locator and is properly declared null and void ab initio. Walter MacEwen, 87 IBLA 210 (1985); McCarthy Mining and Development Co., 87 IBLA 172 (1985); John F. Malone, supra. Consequently, BLM's decision to declare the claims null and void ab initio was proper. Good faith location of the claims has no bearing on the outcome.

Appellants allude to a right in their locations derived from an alleged recognition of the claims by BLM. The withdrawals are of public record and appellants are charged with constructive knowledge of their existence. See Mac A. Stevens, 84 IBLA 124, 127 (1984). BLM is under no affirmative duty to mineral locators to promptly check the legal status of every claim filed by

them and apprise such claimants of its findings. Bill and Judy Bass, 84 IBLA 233 (1984). In reality, BLM cannot be expected to promptly determine the legal status of each individual claim, considering the volume of records for unpatented mining claims it is expected to review. The failure of BLM to immediately notify mining claimants that their claims are located on land not subject to location does not prevent BLM from later declaring the claims void. Id.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge